



Agricultural Marketing Service

7 CFR Part 1216

[Document Number AMS-SC-20-0100]

Peanut Promotion, Research, and Information Order; Increase the Threshold of the Primary Peanut-Producing States and Adjustment of Membership

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule changes the threshold for defining primary peanut-producing states as states that maintain a 3-year average production of at least 20,000 tons of peanuts, instead of 10,000 tons of peanuts as currently prescribed in the Peanut Promotion, Research, and Information Order (Order). The Order is administered by the National Peanut Board (Board) with oversight by the U.S. Department of Agriculture (USDA). As a result of increasing the threshold, the Board's membership will decrease from 13 to 12 members and their respective alternates. This change will contribute to effective administration of the program.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: This rule is issued under the Order (7 CFR part 1216). The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

Executive Order 13175

This action has been reviewed in accordance with requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The Agricultural Marketing Service (AMS) has assessed the impact of this rule on Indian tribes and determined that this rule will not have tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about changes to regulations were shared during a recent quarterly call, and tribal leaders were informed about the revisions to the regulation and had the opportunity to submit comments. AMS will continue to work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to this change to the Order.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This rule will increase the threshold for defining primary peanut-producing states as states that maintain a 3-year average production of at least 20,000 tons of peanuts, instead of 10,000 tons of peanuts as currently prescribed in the Order. This will help ensure that the Board reflects the peanut production in the United States. The Order is administered by the Board with oversight by USDA.

The Order became effective on July 30, 1999. Under the Order, the Board administers a nationally coordinated program of promotion, research and information designed to strengthen the position of peanuts in the marketplace and to develop, maintain, and expand the demand for peanuts in the United States. Under the program, assessments are levied on all farmers' stock peanuts sold at a rate of \$3.55 per ton for

Segregation 1 peanuts, and \$1.25 per ton for Segregation 2 peanuts and 3 peanuts, as those terms are defined in 7 CFR 996.13(b) through (d). Assessments are remitted to the Board by handlers and, for peanuts under loan, by the Commodity Credit Corporation.

The Order defines the terms “minor peanut-producing states” and “primary peanut-producing states” for purposes of Board representation and voting at meetings. According to USDA, Federal-State Inspection Service, National Peanut Tonnage Reports, there are 13 peanut-producing states, which include: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia. Section 1216.21 currently defines primary peanut-producing states as Alabama, Arkansas, Florida, Georgia, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia. These states must maintain a 3-year average production of at least 10,000 tons of peanuts to meet the current definition. All other peanut-producing states are defined as minor peanut-producing states in § 1216.15 and are represented by one member and one alternate on the Board — currently only Louisiana meets this definition.

With the growth in farm size, there are fewer and larger peanut producers than when the Order was promulgated in 1999. As stated above, currently, there is only one state, Louisiana, that represents the minor peanut-producing states, which is the at-large position on the Board. This makes it difficult to get adequate numbers of nominees to fill both member and alternate member seats on the Board. By increasing the threshold for defining primary peanut-producing states to states that maintain a 3-year average production of at least 20,000 tons instead of 10,000 tons of peanuts as currently prescribed, this action will increase the candidate pool for at-large member seats on the Board.

Pursuant to § 1216.87, amendments to the Order may be proposed from time to time by the Board or by any interested person affected by provisions of the 1996 Act, including the Secretary of Agriculture.

For several years, the Board has been concerned about having enough nominees to fill vacant seats and was hopeful that the situation would improve. The Board staff has actively recruited candidates to be considered for nomination from multiple primary peanut-producing states and the at-large state, sometimes with little success. Due to an alternate member vacancy for New Mexico and difficulty finding producers to serve, the Board determined it was time to increase the 3-year average.

The Board discussed increasing the threshold with the industry to explain the situation, and determined that increasing the threshold for defining primary peanut-producing states was a good way to give the peanut producing states an opportunity to be nominated for a member or alternate seat on the Board.

Board Recommendation

The Board met to discuss methods to increase the pool of candidates for representation of the minor peanut-producing states to serve on the Board. At the time of the Board's formation in July 1999 (64 FR 41252), peanut farms were smaller, and therefore, there were many more producers eligible to be nominated to serve on the Board. In April 1999, USDA reported there were approximately 25,000 peanut producers (64 FR 80107). Based on the Board's records, for the 2018 production crop year, there were 8,126 peanut producers and for the 2019 crop year, there were 7,200 peanut producers.

Currently, in minor peanut-producing states the pool of candidates is very small, with Louisiana being the only state in this category. The Board has had difficulty in gathering the required two nominees for each open position for submission to the Secretary of Agriculture.

The Board has been concerned about this issue for several years and was hopeful that the situation would improve. For approximately 10 years, the Board's management has actively recruited candidates to be considered for nomination from multiple primary and minor peanut-producing states to fill seats on the Board. In the 2020 submission to the Secretary for appointments to fill member and alternate seats for New Mexico, only two nominees were submitted for consideration instead of four. Therefore, only the member seat was filled, and the alternate seat remains vacant. In addition, since there is currently only one state (Louisiana) representing minor peanut-producing states, it is often difficult to get a sufficient number of nominees to fill member and alternate positions as well. These nominees are comprised of producers of all sizes including small producers.

In 1999, the Board was comprised of 10 members and their alternates. The Board's representation for primary peanut-producing states were Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia and minor peanut-producing states were represented by a Louisiana member and an Arizona alternate member. Over the years, there have been three adjustments of membership, which increased the size of the Board's membership. On July 9, 2008, the Board increased its membership from 10 to 11 when it added Mississippi as a primary peanut-producing state (73 FR 39214). On March 21, 2014, the Board increased its membership a second time from 11 to 12 when it added Arkansas as a primary peanut-producing state (79 FR 15636). The most recent change in the Board's membership was the addition of Missouri, which was published on March 23, 2020 (85 FR 16229). That addition increased the membership from 12 to 13.

For the 2019 production year, computations based on Federal State Inspection Service data show that Georgia was the largest producer, with 49.8 percent followed by Florida (10.7 percent), Alabama (9.4 percent), Texas (8.7 percent), North Carolina (8.1

percent), South Carolina (4.1 percent), Arkansas (3.1 percent), Virginia (2.0 percent), Mississippi (1.4 percent), Missouri (1.2 percent), Oklahoma (1.0 percent), and New Mexico (0.3 percent). Currently, these 12 states are considered primary peanut-producing states and they each have a member, with their alternate, seated on the Board. All other states (minor peanut-producing states) that produce peanuts are represented by the at-large member.

There is currently only one minor peanut-producing state (Louisiana) representing “at-large” seats. That minor peanut-producing state has only five producers producing peanuts in that state. Increasing the threshold from 10,000 tons to 20,000 tons will cause the state of New Mexico to become a minor peanut-producing state instead of a primary peanut-producing state. This change will increase the pool of candidates eligible to represent minor peanut-producing states as the at-large member and alternate. Minor peanut-producing states will be represented by Louisiana and New Mexico. This rule will increase the threshold for defining primary peanut-producing states as states that maintain a 3-year average production of at least 20,000 tons of peanuts instead of 10,000 tons of peanuts, an increase of 10,000 tons.

The intent of the Order is to allow peanut farmers to oversee a peanut research, marketing, and promotion organization to improve their economic condition. To be successful, there must be an adequate pool of interested, qualified producers to serve on the Board. The Board voted unanimously on December 3, 2020, and February 3, 2021, to raise the threshold for primary peanut-producing states to those that maintain a 3-year average production of at least 20,000 tons of peanuts. This rule will cause the state of New Mexico to become a minor peanut-producing state instead of a primary peanut-producing state, since its production will be below the proposed 20,000-ton threshold. Minor peanut-producing states will be represented by Louisiana and New Mexico. The Board recommended that the change take place by January 1, 2022, to give New

Mexico's certified peanut producer organization enough notice of their status change to a minor peanut-producing state. Nominations to fill the at-large seats will take place during the next nomination cycle.

Accordingly, this rule will amend §§ 1216.15 and 1216.21 to define the state of New Mexico as a minor peanut-producing state. This rule will require primary peanut-producing states to maintain a 3-year average production of at least 20,000 tons of peanuts. This rule will also revise § 1216.40(a) to specify that the Board will be comprised of no more than 12 peanut producer members and their alternates rather than 13, and revise § 1216.40(a)(1) to reflect the new number of primary peanut-producing states, by revising 12 to 11.

Final Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of the final rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$1 million and small agricultural service firms (handlers) as those having annual receipts of no more than \$30 million.

According to the Board, there were approximately 7,200 producers and 34 handlers of peanuts who were subject to the program in 2019.

Most producers would be classified as small agricultural production businesses under the criteria established by the SBA (no more than \$1 million in annual peanut sales). USDA's National Agricultural Statistics Service (NASS) reported that crop values of peanuts produced in the top 11 peanut-producing states for the years 2017,

2018, and 2019 were \$1.63 billion, \$1.17 billion, and \$1.13 billion, respectively. The 3-year crop average was \$1.31 billion. With a 2019 crop value of \$1.13 billion and a total of 7,200 producers, average peanut sales per producer were approximately \$157,000. With a 2017-2018 average crop value of \$1.31 billion, average sales per producer were approximately \$182,000. Both figures are well below the \$1 million threshold for a small producer, providing strong evidence that most peanut producers are small businesses.

With 34 handlers, the average annual peanut crop value per handler from 2017 to 2019 ranged from \$33 million to \$48 million, with a 3-year average of \$39 million. With average sales figures moderately higher than the small business threshold size of \$30 million, it appears that several handlers are small businesses and there are also a number that are large businesses – no definitive statement can be made.

According to NASS, the number of pounds of U.S. peanut production from 11 primary peanut-producing states for 2017, 2018, and 2019 were 7.12 billion, 5.50 billion and 5.47 billion, respectively. The 3-year average production was 6.03 billion pounds. Computations based on NASS data show that Georgia was the largest producer, with 50.9 percent of the 3-year average quantity, followed by Alabama (9.9 percent), Florida (9.9 percent), Texas (9.1 percent), North Carolina (7.2 percent), South Carolina (5.4 percent), Arkansas (2.4 percent), Mississippi (1.9 percent), Virginia (1.8 percent), Oklahoma (1.0 percent), and New Mexico (under one percent).

This action will amend §§ 1216.15, 1216.21, and 1216.40 to redefine the state of New Mexico from a primary peanut-producing state to a minor peanut-producing state. The Order is administered by the Board with oversight by USDA. Under the Order, primary peanut-producing states must maintain a 3-year average production of at least 10,000 tons of peanuts. This action will increase the production threshold to 20,000 tons of peanuts. This action will expand the number of minor peanut-producing states to ensure that the Board obtains an adequate pool of qualified producers to serve on the

Board to represent minor peanut-producing states. This action is authorized under § 1216.87 of the Order.

Regarding the economic impact of this final rule on affected entities, this action will impose no costs on producers or handlers. Changes will define the state of New Mexico as a minor peanut-producing state based on the proposed increase to the threshold to 20,000 tons of peanuts.

Regarding alternatives, the Board has been concerned about obtaining the required two nominees for each open seat to be submitted to the Secretary of Agriculture for primary peanut-producing states and minor peanut-producing states. For years, the Board's staff has actively recruited candidates to be considered for nomination from multiple primary peanut-producing states and minor peanut-producing states, sometimes with little success. The Board considered increasing the threshold for primary peanut-producing states from 10,000 to 30,000 per ton for a 3-year production average. After discussion, the Board voted to double the threshold and require the primary peanut-producing states to maintain a 3-year production average of at least 20,000 tons of peanuts.

In accordance with OMB regulation [5 CFR part 1320], which implements information collection requirements imposed by the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 et seq.], there are no new requirements contained in this rule. In fact, a decrease of 0.30 hours in the information collection burden for the peanut program is expected. Information collection requirements have been previously approved by OMB under OMB control number 0581-0093 and 0505-0001.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Regarding outreach efforts, the Board invited Executive Directors of certified peanut producer organizations who represent the primary peanut-producing states (Georgia, Alabama, Texas, Florida, North Carolina, South Carolina, Mississippi, Missouri, Arkansas, Virginia, Oklahoma, and New Mexico) to attend its annual meeting on February 3, 2021. Most of the Executive Directors for certified peanut producer organizations attended this meeting. All the Board's meetings are open to the public and interested persons are invited to participate and express their views. The Board announced that it voted to increase the threshold level from 10,000 to 20,000 per ton on a 3-year average production for a state to become a primary peanut-producing state. No concerns were raised.

A 30-day comment period was provided to allow interested persons to respond to the proposal which was published in the Federal Register on August 27, 2021 [86 FR 48046]. Copies of the rule were made available through the Internet by the Department and the Office of the Federal Register. The comment period ended September 27, 2021.

Analysis of Comments

Three comments were received in response to the proposed rule. Two comments were received that were determined to be immaterial to the topic.

One commenter questioned if one state, Georgia, produces half of the peanuts in the United States, why do they have a disproportionate say in the promotion of peanuts on the Board? Shouldn't we be amending the Board to better represent the actual production of peanuts in the U.S., instead of assisting the 32 states who barely number more than 1% production?

Research and promotion programs are well established as a way for producers,

importers, handlers, and any other industry member to raise funds for generic product promotion of a commodity. The Board was established consisting of producers from peanut-producing States. The Secretary of Agriculture appoints members to the Board from nominees submitted by the industry according to regulations in its Order.

Membership on the Board allows for one member and one alternate from each primary peanut-producing state, who are producers and whose nominations have been submitted by certified peanut producer organizations within a primary peanut-producing state. Minor peanut-producing states collectively have one at-large member and one alternate, who are producers, appointed from nominations submitted by certified peanut producer organizations within minor peanut-producing states or from other certified farm organizations that include peanut producers as part of their membership. Georgia is currently represented by a member and alternate on the Board.

Accordingly, no changes were made to the rule as proposed, based on the comments received.

After consideration of all relevant material presented, including the information and recommendations submitted by the Board, the comments received, and other available information, AMS finds that this rule, as hereinafter set forth, is consistent with and will effectuate the purposes of the 1996 Act.

List of Subjects in 7 CFR Part 1216

Administrative practice and procedure, Advertising, Agricultural research, Information, Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, Agricultural Marketing Service amends 7 CFR part 1216 as follows:

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

1. The authority citation for 7 CFR part 1216 continues to read as follows:

Authority: 7 U.S.C. 7411-7425 and 7 U.S.C. 7401.

2. Section 1216.15 is revised to read as follows:

§ 1216.15 Minor peanut-producing states.

Minor peanut-producing states means all peanut-producing states with the exception of Alabama, Arkansas, Florida, Georgia, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Texas, and Virginia.

3. Section 1216.21 is revised to read as follows:

§ 1216.21 Primary peanut-producing states.

Primary peanut-producing states means Alabama, Arkansas, Florida, Georgia, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Texas, and Virginia, provided that these states maintain a 3-year average production of at least 20,000 tons of peanuts.

4. In § 1216.40, paragraphs (a) introductory text and (a)(1) are revised to read as follows:

§ 1216.40 Establishment and membership.

(a) *Establishment of a National Peanut Board.* There is hereby established a National Peanut Board, hereinafter called the Board, comprised of no more than 12 peanut producers and alternates, appointed by the Secretary from nominations as follows:

(1) *Eleven members and alternates.* One member and one alternate shall be appointed from each primary peanut-producing state, who are producers and whose nominations have been submitted by certified peanut producer organizations within a primary peanut-producing state.

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Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

